File
reference: 4
O 346/13

Ravensburg District
Court

In the name of the

people verdict

In the litigation

Dr. D.B.
- Plaintiff -

Litigation Counsel:
Lawyers ...

against

Dr. S.L.,
- Defendant -

Litigation Counsel:
Lawyers ...

because of

awarding

the Ravensburg Regional Court - 4th Civil Chamber - by the presiding judge at the Regional Court ..., the judge at the Regional Court ... and the judge ... on the basis of the oral proceedings of 12.03.2015

found to be right:

1. The defendant is ordered to pay to the plaintiff:
   a. 100,000.00 plus annual interest thereon in the amount of 5 percentage points above the respective prime rate since May 1, 2012,
   b. 2,924.07 to extrajudicial costs,
   c. 492.54 plus annual interest thereon in the amount of 5 percentage points above the respective prime rate since April 16, 2014.

2. Orders the defendant to pay the costs.

3. The judgment is provisionally enforceable against security in the amount of 110% of the amount to be enforced.

Facts

The plaintiff is seeking from the defendant essentially the payment of a reward from a prize draw, concerning the proof of the existence and size of the measles virus.

The plaintiff is a physician. The defendant holds a doctorate in biology. On the Internet pages of a publishing house operated by him, the defendant offered a prize under the headline "The measles virus - €100,000 reward! - WANTED - The diameter" on 24.11.2011 a "prize money" in the amount of 100,000.00 €. Among other things, it said:

"The background to the current wave of advertising for the idea that measles is caused by a virus and therefore vaccine should be implanted is the fact that in September spending on vaccines was down 19% compared to the same month last year.
Since the decline in the highest-spending submarket, influenza vaccines, is as much as 29% [...], the German government has decided to vigorously promote measles.
First, it flooded the population with hundreds of thousands of brochures [...].
Immediately after the distribution of the brochure, WHO started the measles promotion [...]
The prize money
After that, the German government announced in early November that the vaccine-authorizing agency, the Paul Ehrlich Institute (PEI), had succeeded in proving that the vaccine could be

the measles virus would spread through the trachea. [...] Then the

Berlin health senate measles sounded the alarm: [...]

If German researchers work with measles viruses on behalf of the German government, there must be documentation of this research, especially since vaccines are to be made from these viruses and these particles are to be used in cancer research. It is obvious that the diameter of the viruses must be known as the first scientific criterion.

100.000 €

Since we know that the measles virus does not exist and cannot exist with knowledge of biology and medicine and we know the real causes of measles very well, but the fear is increasing ("Not vaccinating is child abuse", "This is not dying, but going in", "The measles viruses destroy the brain of the infected child over a longer period of time"), we want to achieve with the prize money,

1. *that people educate themselves and*
2. *that the enlightened people help the non-enlightened ones and*
3. *the enlightened act on the actors in the sense of the laws. [...]*

In Germany, the federal government has commissioned Dr. ... to conduct independent research into the causes of measles within the framework of the law, i.e. the Basic Law and the Infection Protection Act (IfSG). Since she herself claims the breeding of ma - sern viruses, she must know the diameter of the measles virus. Furthermore, it must know where it is located.

It is to her that the question of the diameter of the measles virus must be addressed, as she is primarily responsible for the measles virus. Her address:

PD Dr ...

Robert Koch Institute

[...]

The prize money will be paid if a scientific publication is submitted in which the existence of the measles virus is not only claimed, but also proven and therein
among other things, its diameter is

determined. [...]

The further procedure

If it turns out that Dr. ... claims measles viruses without having any scientific proof of their existence, her behavior - pretending that there is a measles virus - cannot be accepted [...]."

Reference is made in full to the content of the printout submitted as Annex K1.

In a letter dated January 16, 2012 (Annex K2), the plaintiff addressed the defendant with the subject "Your offer of 100,000 euros for proof of the existence of the measles virus" and pointed out that he had read on the defendant's website www. (...) .de that the defendant had offered a prize of 100,000 euros on November 24, 2011, if he were to receive a publication proving the existence of the measles virus....) .de that on November 24, 2011, the defendant had offered a prize of 100,000 euros in the event that a publication was sent to him that proved that the measles virus existed and that made a statement about the size of the virus particles. Furthermore, the plaintiff referred to the above-quoted passage on the website ("The prize money will be paid if [...]") and asked the defendant for brief written confirmation "that the prize is still offered in this form and under these conditions".

The defendant replied to this in a letter dated January 30, 2012 (Annex K3), which stated, among other things: "Thank you for your inquiry. Yes, the prize money is advertised. The legal requirements that the publication must fulfill are defined by the Infection Protection Act (IfSG)."

By letter dated January 31, 2012 (Annex K4), the plaintiff submitted the following six publications to the defendant (referred to here only with authors and reference):

- Enders & Peebles. Proc Soc Exp Bil Med 1954; 86:277-86.
- Bech & von Magnus. Acta Pathol Microbiol Scand 1958; 42:75-85.
- Horikami & Moyer. Curr Top Microbiol Immunol 1995; 191:35-50.
- Nakai & Imagawa. J Virol 1969; 3:187-97.
- Lund et al. J Gen Virol 1984; 65:1535-42.
- Daikoku et al. Bull Osaka Med Coll 2007; 53:107-14.

In the letter, the plaintiff further claimed that he had provided the defendant with proof of the existence of the measles virus as well as with the requested images and information on the diameter of the measles virus through his extensive litera- ture research, and requested the transfer of the amount of €100,000.00 to an account of the plaintiff specified in the letter.

After the plaintiff had not been able to ascertain receipt of payment by February 17, 2012, he again requested payment from the defendant in a further letter (Annex K5) setting a deadline of March 7, 2012.

The defendant reacted to this in a letter dated March 6, 2012 (Annex K6), in which he complained that the plaintiff had not been able to

ger had presented publications in which only cellular components and structures were presented that had not been isolated and biochemically characterized. Every biologist immediately recognizes that the structures are endogenous, i.e. cell-own particles with which the cell carries out inter- and intracellular transport, substance uptake and release, exocytosis and endocytosis. In no publication is there a source with a reference to a successful isolation and characterization of the claimed "measles viruses". He could not hand over the prize money to the plaintiff for this reason, but he hoped that the plaintiff would make a serious effort to eliminate the virus misconception, which had become a fraud in Germany.

The plaintiff replied to this in a letter dated March 21, 2013 (Annex K7), in which he reiterated his view that he had fulfilled the requirements of the defendant's offer and set the plaintiff a new deadline for payment of the prize money by April 30, 2012. Further, the plaintiff described in more detail his motivation for wanting to prove to the defendant the existence of the measles viruses. No payment was made by the defendant, not even in response to an out-of-court reminder sent by the plaintiff's legal representatives in a letter dated September 25, 2013 (Annex K9).

On April 13, 2014 - three days after the first hearing date in the present proceedings - the following could be read on the homepage of the publishing house " (...) ", whose owner is the defendant, at least temporarily:

"On Monday 4/14/2014, we will report in this space, to which we will refer via newsletter, that, why and how the unpromoted, non-specialist junior physician D... B... and his illegal backers in the "Bet there is no measles virus!" - Trial on 10.4.2014, before the Regional Court Ravensburg, lied to the court and the public.
We expect that Dr. L. will be acquitted on 4/24/2014 and that D... B... will be arrested for court fraud, inability to pay court and attorney fees, expenses and reimbursement of expenses, aiding and abetting mass bodily harm, in part with death consequences, and for risk of flight abroad."

In response to the request to submit a cease-and-desist declaration with costs (Annex K10) sent in a lawyer's letter dated April 14, 2014, the defendant signed the cease-and-desist declaration sent on April 15, 2014, deleting a passage rejected as indefinite, and sent it to the plaintiff's attorney (Annex K11). In it, the defendant pointed out that the quoted contribution did not originate from him. Someone must have

se had gained access to his website and posted the article online. When he noticed this on Sunday, 13.4.2014, in the afternoon, he immediately removed the contribution from the network, long before he received the demand letter.

At the beginning of May, the defendant published the following entry on its homepage:

"Dear Readers,
on the basis of a cease-and-desist letter issued by the young doctor D... B... has issued against us through his lawyers, we are not allowed to report on the so-called "betting that the measles virus does not exist" trial.
So we are not allowed to send the already finished issue 3/2014 of W... for the time being.

In a publication submitted as Annex K14 in the magazine W... - Das Magazin 3+4/2014, of which the defendant is identified as the author, the following remark was made subsequently on p. 11 of the article:

"When my staff wanted to report on the lawsuit on our website, D.... B... immediately had this legally prohibited, although he later repeated these statements in interviews. We were therefore unable to publish issue No. 3/2014 of our magazine W... could not be published."

The plaintiff incurred out-of-court legal fees of €492.54 for the lawyer's letter of April 14, 2014, of which he paid €150.00 himself and was authorized by R. Rechtsschutz-Versicherungs-AG to claim the excess amount.

<u>The plaintiff essentially argues:</u>

The publications submitted to the defendant proved beyond doubt the existence of the measles virus in the scientific sense and determined its diameter. For the determination of the diameter, the electron microscopic images including the scale contained in the submitted publications were sufficient. If the size of the measles viruses fluctuates in a certain spectrum and this spectrum is indicated, the diameter is determined. All requirements, which the defendant had set up in its offer for the payment of the reward of 100,000.00 €, were fulfilled.

With regard to the extrajudicial attorney's fees claimed for obtaining a cease-and-desist declaration subject to criminal prosecution, the plaintiff submits that prima facie evidence already speaks for the fact that the

for the fact that the defendant himself had placed the contents on his homepage.

At the time the lawyer's letter of 14.4.2014 was sent, the following text was still to be read on the homepage:

"On Monday 4/14/2014, we will report in this space, to which we will refer via newsletter, that, why and how the unpromoted, non-specialist junior physician D... B... and his illegal backers in the "Bet there is no measles virus!" - Trial on 10.4.2014, before the Ravensburg Regional Court, lied to the court and the public."

The defendant was responsible for the contents of his homepage and could therefore not be heard with his - disputed - objection that someone had gained access to his homepage.

The plaintiff requests,

1. Order the defendant to pay the plaintiff €100,000.00 plus 5% interest above the prime rate since May 1, 2012;
2. Order the defendant to pay the plaintiff a subsidiary claim in the amount of €2,924.07 in extrajudicial attorney's fees;
3. Order the defendant to pay the plaintiff the amount of €492.54 plus 5% interest above the prime rate since April 16, 2014.

The defendant requests,

dismiss the action.

<u>The defendant claims:</u>

The publications submitted did not meet the requirements of proof in the scientific sense. The phenomena presented as measles viruses were actually cellular transport vesicles (vesicles).

None of the documentation submitted was based on experiments in which the pathogen had been isolated and biochemically characterized beforehand, as required, or even in which such an isolation had been scientifically performed.

had been properly documented. The type of "evidence" in the experiments on which the plaintiff relies does not correspond to the state of the art in science and technology and does not meet the requirements for evidence in compliance with Koch's postulates.

The documentation submitted by the plaintiff dated without exception from the time before the Infection Protection Act (IfSG) came into force on January 1, 2001.

The determination of the diameter was also not well-founded. The size range of 300 to 1000 nanometers given in one of the presented publications alone refutes the thesis of the virus, since viruses are characterized by a small variation of their diameter between 15 and a maximum of 400 nanometers. The excuse used by individual scientists that these are "viruses" of pleomorphic structure, i.e. constantly changing in shape, composition and size, is neither scientifically recognized nor true.

He is of the opinion that the following further conditions - which were (indisputably) not fulfilled by the publications - for the payment of the reward are to be taken from the offer on the basis of a correct interpretation:

The existence of the measles virus had to be proven by a publication by the Robert Koch Institute (in its current version: RKI), which was responsible for this according to § 4 IfSG. This is already evident from the fact that, with regard to the publication in Germany, the rules of the IfSG, which were created specifically for the provision of information in the area of infectious diseases, must be applied. Since, according to the provision of § 4 IfSG, research into the cause of infectious diseases is the task of the RKI, the naming of the ma- sern virus in § 7 No. 31 IfSG is only permissible if this institute has scientific evidence, based on its own research in accordance with § 1 IfSG, which satisfies the respective state of the art in science and technology, that the claim included in the law is correct. The purpose of the award was clearly to clarify whether the RKI's documentation complied with Koch's postulate of isolating the pathogen.

Furthermore, *a* (single) publication was required in which both the evidence for the existence of the measles virus and its diameter were determined, so that it was not sufficient if - as argued by the expert - only the combination of the scientific statements in the six technical articles submitted by the plaintiff proved the existence of the measles virus and at least two of these articles contained sufficient information on the diameter of the measles virus.

With regard to the statement on the homepage, which is the background of claim No. 3, the defendant denies that this entry was written by him, initiated by him or published with his knowledge and intention. Furthermore, the entry no longer existed at the time of the plaintiff's lawyer's letter, which the plaintiff was presumably also aware of. Accordingly, the defendant had not given any cause for the extrajudicial activity of the plaintiffs' counsel.

With regard to the other submissions of the parties, in particular the criticisms made by the defendant with regard to the submitted publications, reference is made to the submitted pleadings and documents as well as the minutes of the hearing of April 10, 2014 (pp. 42ff) and March 12, 2015 (pp. 139ff).

The Board has taken evidence on the claim of the plaintiff that the publications sent by letter of 31.1.2012 (Annex K4) are scientific publications in which the existence of the ma- sern virus is not only claimed but also proven and in which, among other things, its diameter is determined, by obtaining an expert opinion of Prof. Dr. med. Dr. rer. nat. P. Reference is made to the expert's explanations.
The court referred to the expert's written opinion of November 17, 2014 (at p. 97), his supplementary statement of March 3, 2015 on the objections and supplementary questions of the defendant (p. 132 et seq.) as well as the minutes of the hearing of March 12, 2015 (p. 139 et seq.), in which the expert was heard in addition and the content of his written opinion as well as the objections raised by the defendant and the supplementary questions addressed to the expert were discussed.

Reasons for decision

The action is admissible and well-founded overall.

A.

The plaintiff has a claim for payment of the reward offered in the amount of € 100,000.00 against the defendant under § 657 BGB.

The "competition" of the defendant contains a serious, binding promise of reward (I.), the offer is also publicly announced in the sense of § 657 BGB (II.). The interpretation of the offer does not result in any restrictions as claimed by the defendant (III.); with the publications submitted by the plaintiff, the requirements of the offer are completely fulfilled (IV.).

I. From the text of the offer itself and taking into account the correspondence exchanged between the parties in this regard, it is sufficiently clear that the defendant has a binding obligation to perform, in particular also the seriousness of the promise of reward.

In particular, the lurid headline "The ma- sern virus - €100,000 reward! - WANTED - The Diameter" and also the sheer amount of the promised reward could give the impression of a lack of seriousness to the effect that the defendant was only interested in attracting as much attention as possible to his criticism of vaccination expressed in the text. However, in particular the purpose that the defendant pursues with the promised reward speaks against the assumption of a recognizably not seriously meant statement. The defendant wants - as he himself expressly explains - "to cause with the prize money 1. that people enlighten themselves and 2. that the enlightened people help the non-enlightened ones and 3. that the enlightened ones influence the actors in the sense of the laws." The defendant is thus obviously interested in providing an incentive for those who - from his point of view - are all too uncritical of the arguments of the vaccination proponents to deal with the question of whether there is scientific proof for the existence of the measles virus.

rus, to critically examine the situation. However, there is an incentive in this sense only if it is actually possible to obtain the reward and its offer is thus meant seriously.

Finally, the defendant did not raise any doubts about the seriousness of his promise of prize money in his letter of January 30, 2012 (Annex K3). The plaintiff's substantive query of January 16, 2012 (Annex K2) about the topicality and the conditions of the offer - which was even expressly designated as such in the subject line of the plaintiff's letter - had given the defendant sufficient opportunity to clarify or disclose any lack of seriousness. However, the defendant did not do anything of the kind; on the contrary, he expressly confirmed that the prize money was advertised.

II. By publishing the announcement of the "prize money" on the Internet pages of the "... - Verlag", the defendant made the announcement public. A public announcement requires the announcement to an individually indeterminate group of persons (cf. *Seiler* , in: MünchKomm-BGB, 6th edition 2012, § 657 marginal no. 12; *Sprau* , in: Palandt BGB, 74th edition 2015, § 657 marginal no. 3), which in the present case is composed of all potential visitors to the publisher's website.

III. The invitation to tender is a unilateral declaration addressed to the general public and does not require receipt, but rather publication (BGH Urt. v. 23.09.2010 - III ZR 246/09 - BeckRS 2010, 24346 Rn. 12; *Sprau* loc. cit. Rn 1; *Seiler* loc. cit. Rn 4). Its object is to be determined by interpretation pursuant to §§ 133, 242 BGB, which is based on the possible understanding of any reasonable participant in legal transactions - as part of the public addressed by the offer (*Seiler* loc. cit. marginal no. 6; *Sprau* loc. cit. Rn. 4; *Kotzian-Marggraf* , in: Beck-OK-BGB, Stand 1.2.2015, § 657 Rn. 7). Based on the wording of the declaration, circumstances are also to be taken into account which are known or recognizable to every person or every member of the addressed group of addressees (cf. BGHZ 53, 307 - juris no. 12). The interpretation to be made according to this standard leads to the result that, contrary to the view of the defendant, the publications do not have to be those of the RKI (1.) nor do they have to originate from the time after the IfSG came into force (2.); nor is the claim to be understood to the effect that the required proof must be provided in a single publication or that reviews may not be used (3.).

1. The interpretation of the declaration of the award does not result in any limiting condition to the effect that the scientific publication to be submitted must be one of the RKI or its employees.

   The defendant postulated this requirement for the first time in the course of the legal proceedings. Out of court, as can be seen from his letter of March 6, 2012 (Annex K6), he had still essentially only referred to the content of the publications sent by the plaintiff, stating that "only cellular components and structures are presented, which have not been isolated and biochemically characterized", for which reason he could not hand over the prize money. The objection that the articles did not meet the award criteria because none of them had been written by RKI employees was not mentioned at all in this pre-court correspondence.

a) The wording of the defendant's declaration does not support the assumption of such a restrictive condition.

   On the contrary, the only requirement for the payment of the prize money is that "a scientific publication is submitted in which the existence of the measles virus is not only claimed but also proven and in which, among other things, its diameter is determined". According to the wording, this is only limited by the fact that the prize money is not paid out "if the determination of the diameter of the measles virus is only a matter of models or drawings [...]". It would have been easy for the defendant to make clear the limiting condition of the award, which he had presented for the first time in the course of the court proceedings, by formulating it as "a scientific publication of *the Robert Koch Institute* [...]". The defendant would have had the opportunity to clarify this not least in its letter of January 30, 2012, which it wrote in response to the plaintiff's explicit request for the award criteria (Annex K2). However, the defendant only adds to the conditions of the competition quoted by the plaintiff from the "competition" to the effect that the publication must comply with the statutory provisions laid down by the IfSG, and otherwise leaves them uncontradicted.

b) Even taking into account the circumstances known or recognizable to an objective recipient of the declaration from the circle of potential visitors to the Internet pages of the "...-Verlag", it is not to be inferred from the advertisement that it must be a publication from the circle of research staff of the RKI.

(1) In this context, the interest which the defendant has clearly associated with its offer is of decisive importance.

The claim is part of an Internet article in which the defendant speaks out against the pharmaceutical industry and seeks to expose the "idea that measles is caused by a virus" as part of an advertising campaign, which - supported by the federal government and international institutions (WHO) - is intended to increase decreased sales of vaccines. The defendant denies the existence of measles viruses, not the measles disease. His declared goal is to inform the population that there is no measles virus and to dissuade them from getting vaccinated.

A special focus of the defendant is PD Dr.....of the RKI, whom he blames,
The author claims that Dr. K. K. is not allowed to claim the cultivation of measles viruses, which presupposes that the diameter of the measles virus is known to her. He calls for contacting Dr.....who has been informed by the
Federal Government was mandated to conduct independent research into the causes of measles to ask them the question of the diameter of the measles virus.

From this reference to the order received from the Federal Government to conduct independent research, it could be concluded that the defendant had requested the submission of the results of this independent research, i.e., a publication by Dr. or, in any case, one from the circle of those at the RKI involved in this research.
entrusted with the task of research. However, such an understanding does not go far enough, taking into account the overall context in which the defendant places its award.

Taking into account the text of the invitation to tender, the interpretation rather reveals a concern of the defendant that is of a much more fundamental character. The aim of the defendant is ultimately to expose the RKI to the extent that the inquiries from visitors to the publisher's pages or their searches for scientific publications on the measles virus negated by the defendant should make this clear: The RKI propagates measles viruses without being able to rely on scientific evidence in this respect. If - according to the idea of the defendant - such a dishonest behavior was once proven, the step to the realization of the population to be informed that the institute is acting for the pharmaceutical industry would not be far away.

The fact that the defendant was not solely concerned with the accusation that the RKI was

neglecting, so to speak, a-

The fact that the defendant emphasizes in principle that it is "forbidden to assert falsehoods" and not, for example, that it is forbidden to make assertions that are not based on *his own* research. Furthermore, with regard to Dr., he also takes the position that she must "[...] at least [...]
know where it [meaning the diameter of the measles virus, Chamber's note] stands," which in turn establishes a reference to outside publications that the staff of the RKI, and among them in particular the "main person responsible," Dr. (merely) zum
are available for re-reading. Below the drawing of a measles virus in the manner of a child's drawing, the defendant states "[...] that in essence the official science, to which everyone refers, does not work much more scientifically" - this emphasis of the all-round "referring" to "the official science" also suggests that the submission of a publication to which the RKI *refers* is sufficient, without this necessarily having to originate from the RKI or its employees themselves.

Finally, he also reveals under the heading "The further procedure" that he is quite generally concerned with revealing that the RKI - according to the defendant's approach - ultimately recommends vaccinations without any proof and not merely without independently achieved research results when he writes: "If it turns out that Dr.
.... claims measles viruses *without having scientific proof* of their existence*,* her behavior - pretending that there is a measles virus - must not be accepted. Her supervisor, to whom complaints must then be made about Dr.... if she cannot provide *any evidence,* is [...]. If it turns out that Prof. ..... knows that Dr. ..... is working *without a scientific and therefore legal basis* [..., emphasis added by the chamber]".

(2) Furthermore, the fact that the defendant's criticism is by no means directed solely against the RKI also speaks against the understanding claimed by the defendant. Rather, it also refers to the WHO and the Paul Ehrlich Institute (PEI) as a vaccine licensing authority, as well as the Berlin Health Senate. In addition, the text of the award establishes a context to German researchers as a whole when, immediately following the description of the research successes of the PEI disseminated by the Federal Government as well as the actions of the Berlin Health Senate, and even before the RKI is mentioned, it says: "So if German researchers work with measles vi- ren on behalf of the Federal Government, there must be documentation of this research [...]." This alone suggests that German researchers working with measles viruses on behalf of the Federal Government cannot mean only the staff of the RKI.

(3) Finally, the statement of award itself under the heading. "100,000" in the fourth paragraph and the reference of the defendant to the plaintiff in the letter of January 16, 2012 (Annex K3), according to which the legal provisions that the publication must fulfill are defined by the IfSG, it cannot be inferred that the publication must be one of the RKI.

First of all, it must be stated that the IfSG does not contain any directly formulated statutory requirements for scientific publications. Against this background, the defendant's reference to the IfSG is subject to interpretation; however, the bridge now built by the defendant from the reference to the legal provisions of the IfSG to the postulated requirement that the publication must originate from the pen of members of the RKI is, in the final analysis, not sustainable.

According to § 4 IfSG, the tasks assigned to the RKI under the IfSG also include "research into the cause, diagnosis and prevention of communicable diseases". However, the transfer of a task does not necessarily imply a legal provision on the requirements that a publication must fulfill according to the IfSG. In any case, the reference of the defendant to the requirements of the IfSG does not necessarily lead to the conclusion (in particular not in a manner recognizable from the objective recipient's horizon) that this was intended to establish a further condition of the award to the effect that only publications of the RKI may provide the required scientific proof of the existence of the measles virus. On the contrary, on an unbiased view, an interpretation is closer to the effect that the defendant was concerned to formulate certain standards which are to be fulfilled by the publications to be submitted, for example if the respective state of the art of medical and epidemiological science and technology is expressly elevated to the decisive quality standard in Section 1 (2) IfSG. That such an understanding is in no way alien to the defendant himself was finally also confirmed by his statement of 2.2.2015, submitted at Bl. 125, there p. 2, where he states: "By tying the award to the IfSG, which came into force on 1.1.2001 and which in § 2 IfSG requires scientific work to be based on the current state of science, it was ensured that the required publication was prepared on the basis of the precise formulations of the "Rules for Ensuring Good Scientific Practice". [...]."

Finally, it should be noted that the legislator, when standardizing the IfSG, apparently already assumed the existence of measles viruses, since it already elevated the measles virus to a notifiable pathogen in the first version of the IfSG, which was valid as of January 1, 2001, under § 7 para. 1 no. 30; obviously, the legislator no longer considered it necessary for the RKI to provide evidence regarding the measles virus. This circumstance also speaks against understanding the reference to the IfSG as an indication that the defendant's announcement only intended to accept publications of the RKI.

2. Nor should the award be interpreted to mean that only a publication that was published *after the* IfSG came into force could meet the award requirements.

The fact that the defendant refers to the legal provisions of the IfSG with regard to the publications to be submitted is not sufficient for such a restriction according to the objective recipient's horizon. It does not follow from the date of a publication alone that the publication cannot be tested against the current state of medical and epidemiological science and technology, which is the yardstick in Section 1 (2) IfSG, with the result that it is also of this quality. Rather, the changeability and developmental openness of research-related standards in the medical field is virtually immanent in the legal provisions of the IfSG, which is preceded by a provision in § 1 (2) IfSG that expressly declares the "current" state of science to be the guideline.

Furthermore, the expert P. explained vividly that almost all of the scientific articles on the proof of the existence and on the structural and molecular nature of the measles virus, which were accepted as necessary and sufficient by the relevant scientific "community", i.e. the worldwide totality of measles researchers and medical users of these research results, had been published before July 2000. Thus, scientific articles from a later time are already remote or extremely rare, because in the eyes of this scientific community there is no reason to prove anew what has already been proven; moreover, corresponding investigations would not be publishable, because scientific journals would not accept already published and generally accepted results for publication a second time, no matter from which source. From the point of view of a recipient of a declaration from the circle of medically trained or interested visitors to the publisher's pages, who are in any case also addressed by the advertisement

the reference to the IfSG can therefore not be an indication that all articles from the years before 2001 should be excluded. Such a restrictive criterion would limit the fulfillment of the award criteria from the outset to such an extent that, from the perspective of an unbiased reader with a certain medical background, it simply could not be expected.

3. Finally, the interpretation of the text of the award also does not show that the required proof of the existence of the measles virus and the determination of its diameter had to be provided in a single publication (a) and that review articles were not to be regarded as suitable publications (b).

a) The defendant referred to these limiting criteria for the first time after the submission of the expert opinion of November 17, 2014, in which the expert P. came to the conclusion that although not one article in itself was sufficient for the evidence, the statements of the six submitted publications - sufficiently proven by adequate and scientifically correct experiments - in their combination both proved the existence of the measles virus and showed its specific infectivity as well as its approximate diameter.

It must be conceded to the defendant that the wording of the award does not contradict his understanding when it states: "The prize money will be paid if *a* scientific publication is submitted in which the existence of the measles virus is not only claimed but also proven *and in which, among* other things, its diameter is determined. (emphasis added by the Board).

However, such a restrictive understanding of the invitation to tender cannot be reconciled with its accompanying circumstances, which have already been fanned out in detail above, and the overall context in which the invitation to tender is textually integrated.

In the matter the defendant is concerned to bring to light by the offer of the "prize money" that there is "not even one" publication, in which the existence of the measles virus is proved and its diameter is determined, since he would like to help altogether the readers of the publishing pages to the realization that the assertion of a measles virus is scientifically not proven in any form. In this way, he ultimately emphasizes how sure he is of his cause. On the other hand, the criticism of the defendant against the vaccination advocates addressed is not even remotely based on the fact that there is no large, coherent original work which could provide the evidence demanded by the defendant.

that have not yet been offered.

Such an understanding would also not be compatible with the publication practice in the medical research context, in which the defendant himself would like to see his award expressly integrated and to whose standards he emphatically refers - at least in a form as he wants it to be understood. Scientific chains of circumstantial evidence or even lines of evidence - as the expert P. has explained - have not been published as monographs for at least decades, but as sequences of several to very many technical articles. This is due, first of all, to the complexity of the findings elaborated in recent times, which as a rule necessitate the simultaneous or consecutive involvement of various groups of scientists with their respective methodological and financial resources. Other reasons include a significant increase in international competition among scientists and the emergence of new publication formats. In view of the complex interrelationships and the degree of differentiation of today's medical research, the demand for a single and comprehensive scientific article would simply not meet the theoretical and practical standards of modern science.

b) For the same reason, the fundamental exclusion of review papers from the canon of suitable scientific publications, which was last objected to by the defendant, cannot be the result of the interpretation of the "competition".

The expert P. has explained that the publication form of the review paper receives specific scientific value by the fact that it represents, so to speak, a modern equivalent of a monograph. Although the review does not present any independent research work of the author(s), it contains literature citations for all facts and research results presented, which make it possible to find the relevant primary literature unambiguously; a review gains independent conclusions precisely from the synopsis of numerous original works - beyond the pure presentation of previous research results.

The exclusion of this type of publication would therefore also contradict the standards of modern science. There is also nothing to show why the recognizable objective of the defendant should contradict the consideration of reviews.

IV. The plaintiff has earned the reward offered; because the publications submitted meet the requirements of the award.

The board reached this conclusion on the basis of the expert opinion of the expert P.. The expert is a physician for microbiology, virology and infectious disease epidemiology as well as for hygiene and environmental medicine and director of the Institute for Medical Microbiology, Virology and Hygiene at the University Medical Center R., his qualification is beyond doubt. This outstanding professional qualification has become clear to the Kammer both in the written explanations of the expert and in the course of his hearing. The expert presented the submitted publications in detail and placed them in the context of the history of research in a comprehensible and understandable manner; he dealt with the defendant's objections in detail and thoroughly.

Based on the expert's explanations, the Board is convinced that the publications sent by the plaintiff in his letter of January 31, 2012 (Annex K 4) are scientific publications (1.), which in their overall view prove the existence of the measles virus (2.) and determine its diameter (3.).

1. According to the current state of medical science in its research-historical context, the publications submitted by the plaintiff are all of such formal quality that they receive the predicate "scientific" in this sense.

a) The expert convincingly explained why the publications submitted were to be qualified as scientific articles without exception. He explained that a publication essentially had to fulfill two formal requirements in order to be qualified as a scientific article on an international level. On the one hand, the article had to be published in a journal with a so-called "scientific journal".
"peer review system and thus, as a rule, reviewed by at least two independent scientists prior to publication and, if necessary, provided with correction requests. On the other hand, listing and accessibility (at least in the form of an abstract) in scientific databases such as NCBI (National Center for Biolotechnological Information; Bethesda, USA) and DIMDI (German Institute for Medical Documentation and Information) is required. All articles submitted met these requirements.

b) The defendant has questioned the scientific nature of the articles from a formal point of view, citing the rules of the German Research Foundation (DFG) for ensuring good scientific practice in its current form.

In the opinion of the Board, the expert P. convincingly pointed out that the rules of the DFG can only be regarded as criteria for scientific excellence to a limited extent, both in terms of time and subject matter. This is immediately obvious because a large part of scientific research in the medical field is conducted outside of Germany and thus outside of the scope of the DFG rules and regulations, and current standards of scientific work cannot be met from the outset by research results of past times, if only because of the constantly developing (both information and documentation) technical possibilities.

2. The publications in question, taken as a whole, prove the existence of a virus that is the cause of measles.

a) As the expert has explained, two questions have to be distinguished - on the one hand, the question whether there is a certain microorganism at all and which nature it has, on the other hand, the question whether this microorganism is actually causally significant for a disease (here the measles disease). In order to provide evidence in this regard, the validity of one of the six publications in dispute is not sufficient in itself. In the overall view, however, the statements of the articles submitted by the plaintiff prove both the existence of the measles virus as a specific microorganism and its causality for the measles disease on the basis of adequate and scientifically correct experiments.

(1) As far as the existence and the nature of the measles virus is concerned - the expert said - there are many basically equivalent ways to collect evidence, whereas in biology it is typically required that two independent ways are followed to prove the existence of a microorganism and to classify it taxonomically. The classical way is the optical proof with microscopic methods, in the case of viruses with the help of an electron microscope. On the other hand, the components of a pathogen can be detected. Furthermore, in the case of a pathogen, one would typically expect it to be able to reproduce; this is the origin of the method of cultural detection of this germ. A further step could then consist of,

that the multiplication of the germ is regarded as a purification step and that the pathogen is then subjected to another microscopic examination to determine whether its appearance and the biochemistry of its germ are unchanged. In addition to these methods, it is now possible to isolate and completely sequence the nucleic acids. - Based on this, the presented articles in their overall view proved the existence of the measles virus as a specific microorganism.

The expert has explained in detail, concisely, comprehensibly and convincingly for each of the publications presented, which of the above-described methods the authors used to arrive at the results, the evidence of which the expert has then critically analyzed and described in a differentiated manner. Reference is made in full to the statements of the expert in his expert opinion of November 17, 2014 under item VII.

For the conviction of the board, the works of Horikami & Moyer from 1995 and Daikoku et al. from 2007 are of particular importance. The review paper by Horikami & Moyer - as explained by the expert - presents fundamental and completely unambiguous characteristics of measles viruses such as their complete genome sequence, whereby the article evaluates and summarizes the content of 97 original papers from peer-reviewed journals on the structure, genome transcription and propagation of the measles virus. This review article and the publications cited therein also introduced in particular the so-called gold standard of an agent characterized in molecular detail, since thanks to genome sequencing all modern ways of direct (e.g. antigen detection, hybridization, nucleic acid amplification) and indirect (e.g. antibody reactions, T-cell activation) unambiguous detection of a microorganism in a host organism could be pursued. The publication by Daikoku et al., which qualifies as an original work and, in view of its structure and scope, as a so-called "full-sized" article, also proves the measles virus specificity of the investigated virions of the classical Edmonston measles virus strain by means of two methods - each described in more detail by the expert - which are independent of each other.

(2) With regard to the question of the causality of the measles virus for the measles disease, the expert expressly stated that the submitted work in its synopsis in particular also fulfills the Koch-Henle postulates raised by the defendant in the course of the legal dispute as a standard of proof.

These postulates were formulated to prove the causal significance of a microbial pathogen for an infectious disease. In their classical form, they contain the following statements according to the plausible explanations of the expert - paraphrased: A pathogen is causally responsible for an infectious disease if it (1) is typically associated with a clearly defined clinical picture when present in humans, (2) can be isolated and cultivated from the affected humans, (3) after transfer to a test animal causes similar symptoms there, and finally (4) can again be isolated or cultivated from the diseased test animal.

With regard to the historical context of Koch-Henle's postulates, the expert added that they had been formulated at a time when only a few particularly aggressive bacterial species (such as the pathogens causing anthrax and tuberculosis) were known that were equally threatening to humans and animals, and which therefore also posed a vital threat to people with healthy defenses. The mechanisms of pathogen defense in humans were also largely unknown or completely unknown at the molecular level at the time the postulates were formulated. In addition, viruses were not known at all at that time, so that the applicability of the postulates to this type of pathogen was at least debatable. In addition, since the formulation of the postulates, numerous pathogens had been discovered, characterized in detail and clearly identified as infectious agents, without all or even only one of the statements being applicable to them. Against this background, three complementary statements would have proved helpful in many cases: Causally responsible pathogens for infectious diseases lead on the one hand to a locally or systemically detectable defense reaction in the affected human being (1), furthermore show in in vitro experiments a similar behavior as in the natural infection or lead to a similar cell-/histopathology (2); furthermore, their selective eradication from the affected human being leads to an improvement of symptoms or even recovery (3). These modern criteria would be in addition to the classically formulated postulates or even partly replace them.

In addition to his written expert opinion, the expert comprehensibly explained in detail during his hearing that and how the publications in question, taken together, provide evidence for the pathogenicity of the measles virus. He stated that the contribution of Enders & Peebles 1954 fulfilled the classical postulates (1) and (2); in addition, there was a certain biochemical characterization (temperature sensitivity) and a statement on size. In the contribution of Bech & von Magnus 1958, the classical postulate (3) was then also fulfilled and additionally

a defensive reaction according to the extended version of the postulates. Finally, the review article by Horikami & Moyer 1995 cites and presents several articles that fulfill the classical postulates (1) to (4). Also the specific cytopathology (extended postulates) is proven, namely the formation of syncytia, i.e. cell fusions, which is typical for paramyxoviruses (to which also the measles virus belongs). In addition, full reference is made to the minutes of the hearing, in particular p. 6 and 7.

In summary, the Board is convinced that the publications submitted by the plaintiff in their entirety also provide evidence for the pathogenicity of the measles virus - especially with regard to the Koch-Henle postulates.

b) The defendant doubts the suitability of the submitted articles and in this respect also relies on points of criticism that the expert himself has raised in individual articles in methodological respects or under the aspect of documentation obligations. The defendant takes these as the starting point for his thesis, according to which the scientific nature of the submitted publications is to be denied in terms of content. On the basis of the medical-research-historical explanations of the expert, these approaches are, however, in the view of the Board, not suitable to question the above-mentioned probative force of the submitted scientific articles in their overall view.

On the one hand, the expert has explicitly and comprehensibly shown that the publications submitted also contain, in particular, the necessary data and control ex- periments on the basis of which it can be ruled out that only cellular artifacts - as which the defendant classifies the alleged measles viruses - are present.

Above all, however, the expert explained - in a comprehensible and directly illuminating manner - that in view of the fact that the canon of methods and, in particular, also the documentation practice of scientific research are constantly developing in qualitative and quantitative respects, it is almost necessary and, as a rule, there are individual aspects of scientific publications which, in retrospect, should also be addressed with critical comments. In the practice of scientific research, however, a good purification mechanism has been established in the scientific literature, which, especially in recent times, has partly affected articles from top-ranking scientific journals. If the processes described in an article could not be reproduced at all in subsequent experiments, this was not the case in articles published in the same journal.

of researchers typically emerge, at least this would be expected for a topic as intensively dealt with as measles. It is true that research results that run counter to a broad scientific consensus are not always easy to publish. However, especially in the face of a broadly accepted view, it promises a high reputation to publish new and better findings; scientifically correct refutations of previous positions should then also be published in a high-ranking manner. At the same time, the random check of the huge number of scientific articles carried out by the expert did not find a single article that denied the existence of the measles virus or its causal significance for the measles disease.

In this respect, it seems significant to the Board that even the defendant, who himself holds a doctorate in the field of virology, was not able to name a single scientific article or renowned scientist, apart from his own statements, who denies the existence of the measles virus or its causal significance for measles disease.

As a result, even the undeniable weaknesses of the publications presented are not suitable to cast doubt on their overall evidential value.

c) Finally, the defendant postulates a circumstantial chain of its own, according to which the evidence requires that the measles virus (1) photographs in a human being or his body fluid,
(2) isolated from it, (3) purified, (4) photographed again and then (5) its composition biochemically characterized with a subsequent re-infection experiment (6).

With regard to this chain of evidence postulated by the defendant, the expert explained to the Board in a comprehensible and convincing manner that it was not of scientific significance beyond the quality of a hypothesis. However, the Board is convinced that the publications presented are not to be measured against hypotheses but exclusively against scientifically established standards with regard to their scientifically substantiated information value. However, the defendant has neither been able to demonstrate nor to prove that the chain of evidence listed by the defendant is such a chain of evidence.

3. The determination of the diameter in the form requested by the defendant has also succeeded to the conviction of the Board within the framework of the scientific articles submitted by the plaintiff.

Information on the diameter of the measles virus on the basis of electron microscopic analyses can be obtained, according to the detailed explanations of the expert, in particular from the original papers and all of them qualifying as so-called "full-sized" articles by Nakai & Imagawa from 1969, by Lund et al. from 1984 and Daikoku et al. from 2007.

The fact that the size and diameter data vary within a range of 50 to 1000 nm can be plausibly explained scientifically to the conviction of the Board, as the expert explained in more detail in response to doubts expressed by the defendant in this regard. Regarding the structure of a virus, the expert explained that in each virus the nucleic acid (hereditary substance) is enveloped by protein in a structured arrangement. Depending on the type of virus, the nucleocapsid is enveloped by another protein shell of a fixed size and rigid structure (e.g. polyhedron or complex radial symmetrical structure) or by a part of the host cell membrane (outer shell). The formation of this outer envelope, which is flexible due to its chemism, involves random aspects for each emerging virion, which in turn affects the individual size. Thus, enveloped viruses have a multiform, constantly changing shape and a size that varies considerably between the virions of one generation. Accordingly, enveloped viruses of a virus species are multiform (= pleomorphic) and of different sizes, which also applies to the taxonomic family of paramyxoviruses, to which the measles virus belongs. If electron micrographs of such multiform virions were taken, two-dimensional optical sections would have to be made through the three-dimensional particles. Depending on the angle at which the section is made through the three-dimensional virion and, in addition, at which point of the virion this section is made through its three-dimensional structure, two-dimensional images may be produced whose diameters differ considerably - also in the variation ranges specifically determined for the measles virus in the publications.

B.

Since the defendant was in default with the payment of the reward at the time the plaintiff commissioned the legal representatives, the plaintiff may also claim compensation for the legal fees incurred by him for the extrajudicial activities of his legal representatives in this regard pursuant to Sections 657, 280 (1), (2), 286 of the German Civil Code.

C.

The plaintiff may also - with the consent of R.-Rechtsschutz-Versicherungs-AG - demand payment from the defendant under Section 831 of the German Civil Code of the legal fees incurred for the letter of 14.4.2014 (Annex K10) and the corresponding pre-litigation work of his legal representatives.

I. The statements in dispute, with regard to which the plaintiff, in the letter from his lawyer submitted as Exhibit K10, requested from the defendant the submission of a declaration of submission under penalty of perjury and also achieved this almost in its entirety, constitute allegations of fact. This is because the accuracy of the statement that the plaintiff and his "illegal backers" lied to the court and the public before the Ravensburg Regional Court is amenable to proof (cf. *Rixecker* , in MünchKomm-BGB, 6th ed. 2012, Appendix to § 12 The General Right of Personality marginal no. 143). In the statement: "We expect that Dr. L... will be acquitted on 24.4.2014 and D... B... will be arrested for court fraud, inability to pay court and attorney's fees, expenses and reimbursement of expenses, aiding and abetting mass bodily harm, in part with fatal consequences, and because of the risk of flight abroad" also contains the incidental assertion that the plaintiff had defrauded the court and was unable to pay, which is also a factual assertion. The mere fact that the allegations are formulated very pointedly does not deprive the statement of the character of a factual allegation.

II. The defendant has not even claimed that his statements are true. However, anyone who makes factual allegations in a general form which are defamatory and which also violate the plaintiff's general right of personality must in principle explain their justification in more detail and cite evidence for his statement (*Rixecker*, loc. cit., para. 150). The defendant has not met this burden of proof with regard to the truth of the factual allegation or, in any case, the circumstances which show that the defendant's statement is based on careful research.

III. The defendant cannot exonerate himself with his argument that he neither wrote nor initiated the entry himself and that the publication did not take place with his knowledge and intention. Rather, the defendant must accept responsibility for the conduct of his employees. In a publication written by the defendant himself (Annex K14), the defendant himself stated that the plaintiff immediately had it legally forbidden "when my employees wanted to report on the trial on our website [...]". Since it is undisputed that a cease-and-desist declaration was only issued with regard to the disputed statements, the plaintiff has not made a declaration.

The defendant itself has thus admitted that the design of the website in this respect was initiated by its own employees. The defendant must therefore compensate the plaintiff for the damage caused to the plaintiff by the unidentified employee in the performance of the task assigned to him.

IV. It was open to the defendant to exonerate himself pursuant to Section 831 (1) sentence 2 of the German Civil Code (exculpation). However, the defendant has already failed to show that he exercised the due diligence required in the course of business when selecting and hiring the appointed persons ("my employees"). A concrete submission to this effect has not been made, although the plaintiff has already referred in writing to the above-mentioned remark of the defendant (Annex K14) in order to substantiate the responsibility of the defendant.

V. Due to the unlawful act, the defendant owes compensation for the attorney's fees incurred for obtaining the cease-and-desist declaration with penalty clause. The commissioning of the legal representatives was also necessary, since due to the fact that the plaintiff's general personal rights had already been impaired, the risk of repetition within the meaning of Section 1004 (1) of the German Civil Code is presumed and this presumption is not eliminated in particular by the mere deletion - whether complete or merely partial - of the entry. Finally, in view of the circumstances and the assertion of a claim for injunctive relief based on the violation of the general right of personality, which certainly requires certain legal knowledge, the plaintiff could not reasonably be expected to forego legal assistance.

VI. The amount of the claim according to the calculation of the plaintiff's counsel (1.3 - business fee from a value of € 5,000.00 plus postage and VAT) amounts to € 492.54.

D.

The interest claims are justified in each case on the basis of Secs. 280 (1), (2), 286, 288 BGB.

E.

The decision on costs follows from § 91 ZPO. The decision on the provisional enforceability is based on § 709 p. 1 + 2 ZPO.

Presiding Judge at the Regional Court

Judge at the district court Judge

Announced 12.03.2015

_____

Clerk of the court